A

SHAMSULKAHAR SHUAIB v. PEGUAM NEGARA, JABATAN PEGUAM NEGARA & ANOR

HIGH COURT MALAYA, TAIPING
NOOR RUWENA MD NURDIN J
[CRIMINAL APPLICATION NO: AB-44-15-07-2024]
16 DECEMBER 2024

B

Abstract – *Section 173(g) of the Criminal Procedure Code does not allow for a discharge amounting to acquittal before the close of the prosecution's case. An application for discharge amounting to acquittal must be filed after the Public Prosecutor has exercised its prosecutorial discretion, ie, after the close of the prosecution's case.*

C

D

CRIMINAL PROCEDURE: *Acquittal or discharge – Acquittal of accused before close of prosecution's case – Application for discharge amounting to acquittal – Applicant charged under s. 302 of Penal Code for offence of murder – Application for acquittal filed prior to commencement of trial and only based on affidavit evidence – Whether High Court could exercise inherent jurisdiction to allow application – Whether application meritorious – Whether application ought to be allowed – Criminal Procedure Code, s. 173(g)*

E

This notice of motion ('notice') filed by the applicant was initiated pursuant to s. 31 of the Courts of Judicature Act 1964 ('CJA'). The applicant, among others, sought: (i) to annul the charge preferred against him under s. 302 of the Penal Code ('PC') ('charge') prior to the commencement of the trial, which was fixed on 8 to 11 September 2025; (ii) to annul the consent to prosecute under s. 177A(1) of the Criminal Procedure Code by the Perak State Director of Prosecution ('PSDP'); and (iii) to acquit and discharge the applicant from the said charge ('application'). On 24 October 2022, when the applicant was riding his motorcycle, he was stopped by the deceased who said 'Aku mahu hang'. The deceased then grasped the applicant's collar and punched his mouth. In retaliation, the applicant punched the deceased's face. That had caused a fight to ensue between the two, and it continued even after they both fell into an irrigation canal. The villagers who saw the fight, came and tried to stop it. Once the applicant and the deceased managed to get out of the canal, the applicant retrieved his motorcycle. At that time, the deceased had provoked the applicant by saying 'Hang nak lagi' repeatedly. However, the provocation was ignored, and the applicant made his way home. Subsequently, after the applicant reached his home, he was informed by the villagers that the deceased had died. After the body of the deceased was referred to the hospital, as per the post-mortem report prepared by one 'Dr Mohammad Shafie', the cause of death of the deceased was confirmed to be 'Serangan Jantung Pada Jantung Yang Berparut Dicetuskan Dari Tekanan Mental dan Fizikal' ('post-mortem report'). Hence, the said charge and the present application.

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I

Held (dismissing application):

(1) The applicant had 'jumped the gun' by bringing this application because it was obviously premature. The court had not heard any evidence from the prosecution in the trial which would commence in September 2025. The prosecution would have to explain why the applicant was charged on the evidence before it. Although s. 31 of the CJA was invoked by the applicant, the court may not exercise its revisionary powers regarding the applicant since there was no more criminal proceeding and matter in the subordinate courts when his case was transferred here, to be mentioned upon the consent being given by the PSDP. The allegation that the prosecution was relying on s. 300(c) of the PC was merely conjecture. The prosecution bore the legal burden of proving its case beyond reasonable doubt throughout the trial. The court's duty is to evaluate all the evidence presented by the prosecution on a maximum evaluation standard as required by s. 180(1) of the CPC. Whether the charge was correctly framed under ss. 299 or 300 of the PC, that exercise would only be undertaken by the court at the end of the prosecution's case. (paras 23-25)

(2) The application was inappropriate, even after taking into consideration the court's power. Clearly, s. 173(g) of the CPC does not allow for a discharge amounting to acquittal before the close of the prosecution's case. The applicant had attempted to obtain an acquittal without having to go for a full trial, and only through affidavit evidence for the court's consideration. This application was wrongly made as the law was settled on this issue and an accused must go through a full trial where the prosecutorial discretion would have been exercised by the Public Prosecutor. Since there was no reason to depart from the established judicial precedents, the application was without merit and therefore, dismissed. (paras 27, 36, 39 & 40)

Case(s) referred to:

Ahmad Zubair Hj Murshid v. PP [2014] 9 CLJ 289 FC ***(refd)***
Chew Wai Keong v. PP [2013] 10 CLJ 181 HC ***(refd)***
Chu Chee Peng v. PP [1973] CLJU 18; [1973] 1 LNS 18 FC ***(refd)***
Long Samat & Ors v. PP [1974] CLJU 80; [1974] 1 LNS 80 FC ***(refd)***
Mohamed Yasin Hussin v. PP [1976] CLJU 75; [1976] 1 LNS 75 ***(refd)***
PP v. Datuk Harun Hj Idris & Ors [1976] 2 MLJ 116 ***(refd)***
PP v. Datuk Hj Sahar Arpan [1999] 3 CLJ 427 HC ***(refd)***
PP v. Datuk Wira SM Faisal SM Nasimuddin Kamal [2019] 8 CLJ 827 HC ***(refd)***
PP v. Lee Tin Bau [1984] CLJU 56; [1984] 1 LNS 56 ***(refd)***
PP v. Sanderasegaran Nithenanham [2024] 4 CLJ 823 FC ***(refd)***
PP v. Uthaya Kumar Ponnusamy [2005] 3 CLJ 365 CA ***(refd)***
PP v. Viran [1947] CLJU 82; [1947] 1 LNS 82 HC ***(refd)***
Ravindran Ramasamy v. PP [2015] 3 CLJ 421 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 31
Criminal Procedure Code, ss. 156, 173(g), 177A(1), 180(1), 376(3), 418A
Federal Constitution, art. 145(3)
Penal Code, ss. 299, 300(c), 302

For the applicant - Charan Singh & Noorfarihah Arshad; M/s Nurul, Charan & Shabnam
For the respondent - Sally Chay Mei Ling; DPP

Reported by Syamim Ariffin

JUDGMENT

Noor Ruwena Md Nurdin J:

Introduction

[1] The case before this court was a notis usul by the applicant, Shamsulkahar bin Shuaib, in an attempt to obtain an order from this court, *inter alia*, to strike out the charge against him that was preferred by the Public Prosecutor under s. 302 of the Penal Code. The charge in the Case No. AB-45B-1-01/2024 was as follows:

> Bahawa kamu pada 24 Oktober 2022, antara jam lebih kurang 4.00 hingga 5.00 petang bertempat di Jalan Parit Tok Ngah, Jalan Baharu, Tanjung Piandang, di dalam daerah Kerian, dalam Negeri Perak Darul Ridzwan telah melakukan bunuh dengan menyebabkan kematian ke atas Mahadzeb Bin Salleh (No. KP: 751002-02-5373) dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[2] After hearing the application, the court reserved judgment and on 28 October 2024 the court dismissed the notis usul as there was no basis to grant the prayers in the application. Dissatisfied with the court's decision, the applicant filed a notice of appeal on 8 November 2024. This grounds of judgment contains my reasons for dismissing the same.

Cause Papers

[3] The cause papers were as follows:

(i) notis usul dated 10 July 2024 - encl. 1;

(ii) afidavit sokong affirmed by the applicant on 9 July 2024 - encl. 2;

(iii) afidavit jawapan affirmed by Insp Raboni ak Jistin on 16 July 2024 - encl. 4;

(iv) afidavit jawapan affirmed by DPP Sally Chay Mei Ling on 16 July 2024 - encl. 5; and

(v) afidavit balasan affirmed by the applicant on 8 August 2024 - encl. 8.

[4] The notis usul was made pursuant to the relevant provisions of the Federal Constitution (FC), Courts of Judicature Act 1964 (CJA), Penal Code and the Criminal Procedure Code (CPC). Enclosure 1 prayed for the following reliefs from the court:

(i) to annul the charge under s. 302 of the Penal Code before the commencement of trial in this Honourable Court;

(ii) to annul the consent to prosecute under s. 177A(1) of the CPC;

(iii) to acquit and discharge the applicant from the charge; and

(iv) other reliefs deemed fit by the court.

[5] The application was filed to challenge the validity of the Public Prosecutor's consent to prosecute under s. 177A(1) of the Criminal Procedure Code (CPC) dated 20 December 2023 issued by the then Perak State Director of Prosecution in respect of the alleged murder of the deceased, Mahadzeb bin Salleh, by the applicant as stated in the charge (exh. A of encl. 2). Essentially, the court was moved to exercise its revisionary powers under s. 31 of the CJA to revise a criminal proceeding in the subordinate court before the matter was tried in the High Court. Since the Attorney General is empowered under art. 145(3) of the Federal Constitution to institute, conduct and discontinue any proceedings for any offence, therefore the applicant contends that the Attorney General also has the power to annul any charge and consent to prosecute as aforesaid.

Facts Of The Case

[6] The applicant in encl. 2 averred that on 24 October 2022 while he was riding his motorcycle on Jalan Parit Tok Ngah Tanjung Piandang, he came across the deceased who stopped him and said "Aku mahu hang". The deceased grasped the applicant's collar and punched his mouth. The applicant retaliated by punching the deceased's face and they struggled until both fell into the irrigation canal. During the fight, the villagers came and tried to break up the fight. Afterwards, the applicant and the deceased got out from the canal. Then as the applicant tried to retrieve his motorcycle, the deceased repeatedly said "Hang nak lagi". The applicant ignored the provocation and immediately rode his motorcycle home. He was only informed by the villagers when he reached home that the deceased had died. The following day, the applicant lodged a police report as per Tg Piandang 1495/22 (exh. C in encl. 2).

[7] The post-mortem report of the deceased was exhibited in encl. 2 as exh. D. It was conducted by Forensic Pathologist Dr Mohammad Shafie bin Othman of the Forensic Medicine Department at Hospital Raja Permaisuri Bainun in Ipoh. The cause of death was stated as "Serangan Jantung Pada Jantung Yang Berparut Dicetuskan Dari Tekanan Mental Dan Fizikal". Under the part written as rumusan, the pathologist had written:

Bedah siasat menunjukkan si mati ada menghidap penyakit penyempitan arteri koronari serta jantung berparut (Myocardial Fibrosis). Pemeriksaan mikroskopi menunjukkan serat jantung mengalami infarksi nekrosis yang mencadangkan si mati telah mendapat serangan jantung pada jantung yang berparut yang telah dilihat telah menyebabkan kematiannya.

Serangan jantung yang berlaku dilihat telah dicetuskan oleh tekanan mental dan fizikal akibat dari serangan/pergaduhan yang berlaku sebelum kematiannya.

Dalam keadaan biasa, kecederaan yang dialaminya tidak menjurus kepada kematiannya. Namun begitu, penyakit yang dihidapi oleh si mati menjadikan jantung tidak stabil (vulnerable) dan sebarang faktor pencetus (trigger) dilihat telah mengakibatkan serangan jantung.

Berdasarkan keadaan mayat, anggaran waktu kematian dilihat berlaku dalam tempoh 12 jam dari waktu mayat diterima di Jabatan Forensik, Hospital Permaisuri Bainun.

Hearing Of The Application

[8] The applicant in encl. 2 disputed that the death of the deceased was attributed to the fight because the deceased already had an underlying medical condition and the latter's death was not due to any external injuries that were sustained from the fight between him and the deceased. Hence, the post-mortem report conclusively stated that death was due to natural causes, *ie*, heart attack. He contended that there was no evidence to show that he had done anything that could have been interpreted as causing the death of the deceased. Therefore, he was advised that to continue the charge under s. 302 of the Penal Code was a serious miscarriage of justice against him because the charge was not supported by the medical report or any other documents that had been served upon his counsel. The prosecution's conduct in bringing an unsubstantiated charge without conclusive and credible evidence was also against the public interest. The applicant further contended that his detention in remand for a long period of time on an unsubstantiated charge was against his fundamental rights and had breached his right to freedom and equality as a citizen under the law, had prejudiced him and such breaches could not be remedied. For the record, the applicant was charged in the High Court on 28 February 2024 (AB-45B-1-01/2024) and counsel immediately informed the court that an application would be filed to nullify the charge against his client. Trial has been fixed on 8 to 11 September 2025.

[9] The police report of the applicant stated the time of the incident was 3.10pm. The deceased's remains were brought to the hospital at 11.50pm on 24 October 2022 and the time when the body was found by the police was stated in exh. D as 5pm on 24 October 2022. The post-mortem was conducted on 25 October 2022 at 10.45am. It would appear therefore that

the deceased died between 3.10pm to 5pm on that day, and this was reflected in the charge which stated that the applicant murdered the deceased in the period of time between 4 to 5pm, not long after the time of 3.10pm that was stated in the applicant's police report.

[10] The investigation officer (IO) and DPP in their affidavits (encls. 4 and 5) denied the allegations in encl. 2. The IO contended in encl. 4 that his investigations obtained direct and circumstantial evidence, expert and documentary evidence showed that the applicant committed culpable homicide against the deceased and the deceased had suffered an injury that was sufficient in the ordinary course of nature to cause death. He stated that the expert's report from Dr Mohammad Shafie confirmed that the deceased's death was caused by the act of the applicant that was intended to bring about an injury which was sufficient in the ordinary course of nature to cause death.

[11] The DPP's affidavit in encl. 5 contained similar averments. Additionally, the DPP stated that charging the applicant under s. 302 of the Penal Code was consistent with the PP's powers under s. 376(3) of the CPC and in accordance with the provision of art. 145(3) of the FC to institute proceedings under the respective laws. The DPP stated further that it was the PP's prerogative to charge the applicant under s. 302 of the Penal Code after perusing the investigation papers compiled by the police IO in respect of the deceased's death.

[12] The applicant's affidavit in encl. 8 rejected the averments of the IO and DPP. He contended that the purported evidence obtained were merely speculation as there was no confirmation from Dr Mohammad Shafie that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. Failure to obtain the pathologist's statement had occasioned a miscarriage of justice because the purported evidence was hearsay and could not substantiate a charge of murder against him. The applicant averred further that the DPP's affidavit never stated that the prosecution relied on s. 300(c) of the Penal Code, *ie*, that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. Therefore, there was also no basis for the prosecution to issue a consent under s. 418A of the CPC to prosecute the applicant on a charge of murder.

Evaluation And Findings Of The Court

[13] The hearing was adjourned once because the applicant's counsel wanted to conduct further research into Indian case laws on the same issues. They filed three written submissions prior to the hearing of the application where the court was referred to numerous Malaysian case laws (refer to encls. 12, 14 and 15). The DPP also filed a written submission as per

encl. 9. I will refer to these later in this judgment. But before that, I refer to the provision of s. 31 of the CJA, which the applicant has invoked to move the court in respect of his notis usul. The provision reads:

> Revision of criminal proceedings of subordinate courts
>
> 31. The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure.

[14] It was submitted on behalf of the applicant that there was no basis for the consent under s. 177A(1) of the CPC to be issued and the DPP did not plead the elements of s. 302 of the Penal Code in the afidavit jawapan in encl. 5. In short, the applicant's submissions hinged on the requirements of ss. 299 and 300 of the Penal Code. Counsel submitted on these cases, *inter alia*, *Mohamed Yasin Hussin v. PP* [1976] CLJU 75; [1976] 1 LNS 75; [1976] 1 MLJ 156; *PP v. Datuk Hj Sahar Arpan* [1999] 3 CLJ 427 and *Ahmad Zubair Hj Murshid v. PP* [2014] 9 CLJ 289 in support of their position. The provision of s. 177A(1) reads:

> Transmission of case to, and trial by, the High Court
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> 177A. (1) A prosecution in respect of an offence which is to be tried by the High Court in accordance with Chapter XX, shall not be instituted except by or with the consent of the Public Prosecutor:
>
> Provided that a person may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until the consent has been obtained.

[15] However, those cases did not deal with s. 177A(1) of the CPC. In *Mohamed Yasin Hussin* (*supra*), the trial judges found that the injuries which resulted in the death of the victim were caused by the appellant's sitting forcibly on the victim's chest in the course of a violent struggle when she was resisting his attempt to rape her. The Privy Council held that the *lacuna* in the prosecution's case, which the trial judges overlooked, was the need to show that, when the accused sat forcibly on the victim's chest in order to subdue her struggles, he intended to inflict upon her the kind of bodily injury which, as a matter of scientific fact, was sufficiently grave to cause the death of a normal human being of the victim's apparent age and build even though he himself may not have sufficient medical knowledge to be aware that its gravity was such as to make it likely to prove fatal. At p. 158, Lord Diplock held:

> To establish that an offence had been committed under section 300(c) or under section 299, it would not have been necessary for the trial judges in the instant case to enter into an enquiry whether the appellant intended to cause the precise injuries which in fact resulted or had sufficient

knowledge of anatomy to know that the internal injury which might result from his act would take the form of fracture of the ribs, followed by cardiac arrest. As was said by the Supreme Court of India when dealing with the identical provisions of the Indian Penal Code in *Virsa Singh v. State of Punjab* AIR 1958 SC 465 at p 467:

> that is not the kind of enquiry. It is broad-based and simple and based on commonsense.

It was, however, essential for the prosecution to prove, at very least, that the appellant did intend by sitting on the victim's chest to inflict upon her some internal, as distinct from mere superficial, injuries or temporary pain.

The trial judges did not find this to be proved. There was no evidence upon which such a finding could have been based, had they directed their minds to the question. It follows, therefore, that the appellant's conviction for murder must be set aside. For similar reasons a conviction for culpable homicide under section 299 cannot be substituted for the conviction under section 300(c), since an intention on the part of the accused to inflict such bodily injury as is likely to cause death is a necessary ingredient of an offence under the relevant part of section 299.

[16] Counsel also cited the case of *PP v. Datuk Hj Sahar Arpan* (*supra*), where Suriyadi Halim Omar J (as His Lordship then was), held:

> *Under s. 376 of the Criminal Procedure Code, the Attorney General shall be the Public Prosecutor, and shall have the control and direction of all criminal prosecutions and proceedings, be it in the form of their initiation or withdrawal (art. 145(3) of the Federal Constitution).* The court must never be a party in shackling those constitutional powers, but instead must work towards ensuring that the rights of an accused person is not being violated. An accused person in any criminal proceeding is very aware that his freedom is constantly being intimidated, and may be short-lived, and as such will only be too happy to see the back of that court as soon as possible. *Therefore if a court decides promptly, and declare the two witnesses as impeached as in this case, either way both the parties will be grateful, with the Public Prosecutor being too happy to be rid of saboteurs of his case, whilst the accused being more than happy to see a weakened prosecution. A weakened prosecution can only improve his chances of an acquittal. If both parties are waiting with bated breath for an immediate ruling, bearing in mind that no inhibition is placed under s. 155 for that course of action, I see no reason to procrastinate and cause disaffection on all parties.*
>
> (emphasis added)

[17] In their written submissions, the unhighlighted part of the paragraph above was stated but they did not see it fit to read out to the court the part which I have highlighted for emphasis above. I noted that Justice Suriyadi held the above in the context of an impeachment proceeding that was conducted by the prosecution in that case. Therefore, I was of the view that the context of that statement would not have made *Datuk Hj Sahar Arpan*

(*supra*) a suitable case to be argued in support of the applicant's contention. For the record, the preceding paragraph of the above paragraph that I have cited stated the following:

> *In the event that challenged witness (for brevity I have resorted to the terminology of "challenged witness") is the nuclei of the prosecution's case, but impeached immediately, then in all probability the prosecution would withdraw the case or offer no further evidence against him*. To delay until the very last of a long list of witnesses is completed surely would be an exercise in futility. Whether the determination is at the end of the impeachment proceeding or otherwise, the outcome would still be similar in that an acquittal would follow. The accused too would know what course of action to undertake if the very accuser or an important element of the prosecution's case has been eliminated, thus ensuring certainty and fairness to both the adversaries. A denial of the right of certainty, and not be subject to malicious prosecution, or be hounded by a groundless charge surely is an abrogation of the constitutional and substantive right of the accused.
>
> (emphasis added)

[18] Additionally, pursuant to *PP v. Datuk Hj Sahar Arpan*'s case above, this court was urged that it should exercise its inherent power to strike out the charge that was allegedly *mala fide* against the applicant. Meanwhile, in the case of *Ahmad Zubair Murshid* (*supra*), the Federal Court was cited in the applicant's submission that:

> [25] In the present case both the High Court and the Court of Appeal held that the High Court has inherent power to set aside and quash or stay the charges permanently against the appellant. Historically the doctrine of inherent power which allowed the High Court to prevent an oppressive and *mala fide* prosecution, abuse of process and to do wrong in the administration of justice has its origin in the English common law. Such doctrine can be traced in the following cases:
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> (a) *Metropolitan Bank Ltd & Anor v. Pooley* [1881-1885] All ER Rep 949. where it was held:
>
> > There is an inherent power in every court of justice to stay a manifestly vexatious suit and to prevent vexatious suit and so protect itself from an abuse of its procedure
>
> (b) In *Connelly v. Director of Public Prosecutions* [1964] 2 All ER 401, 409, Lord Morris of Borth-Y-Gest said:
>
> There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice.

(c) In *Mills v. Cooper* [1967] 2 All ER 100, 104 Lord Parker CJ said:

> Every Court has undoubtedly a right in its discretion to decline to hear proceedings on the ground that they are oppressive and an abuse of the process of the court

[26] Although we accept the forgoing principles stated above as the correct statement of the law, we must caution ourselves that the inherent powers of the court must be exercised in exceptional circumstances to prevent undue oppression and abuse of the process of the court ... .

[19] Now, I have perused the subsequent sentence in para. 26 above onwards in the case of *Ahmad Zubair Murshid* (*supra*) because the Federal Court in that case also held that:

(3) *The appeal by the appellant to the Court of Appeal and later to this court on a preliminary issue whether the charges against the appellant in the sessions court were defective in form and substance was clearly an abuse of the court process*. This was especially so when the appellant concurrently had made similar application before the sessions court to have the charges preferred against him to be struck out and that the application before the sessions court was dismissed. This has raised another issue of whether the Appellant after making an application to strike out the charges before the sessions court can now, as he did, apply the same to the High Court relying on the case of *Karpal Singh & Anor v. Public Prosecutor* [1991] 2 MLJ 544 ('*Karpal Singh*') as the authority for such a proposition. It could not be done as *Karpal Singh* could no longer be the authority for such proposition (see para 34).

(4) *The appellant had applied before the High Court to quash the charges and order an acquittal against him. The application was dismissed. The appellant had also applied before the sessions court for the charges to be quashed and prayed that a discharge not amounting to acquittal to be ordered against him. The application was also dismissed. The orders of the courts below would connote that the matter should proceed for trial as the charges preferred against the appellant still stood. Clearly the decision not to strike out the charges before the commencement of the trial as was done in this instant case did not amount to disposal of the rights of the parties. Since the order gave no final decision on the matters in dispute, it was not a 'decision' within the definition under s. 3 of the Courts of Judicature Act 1964 and was therefore not appealable (see para 39).*

(emphasis added)

[20] In the interests of justice, I have reproduced the remaining sentences in para. 26 and onwards. They are rather lengthy, but the apex court had explained why the appeal was dismissed:

[26] ... *It should also be noted that the inherent jurisdiction of the court springs not from legislation but from the nature and constitution of the court as a dispenser of justice! (see Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Other applications*

[2013] 4 MLJ 351). As such we may hasten to add that the inherent jurisdiction of the court is therefore not as wide as it seems to be. Much depends on the facts and circumstances and clearly the court cannot exercise its inherent jurisdiction in respect of any matter covered by specific provisions of the law or if its exercise would infringe any specific provisions of the law. In this aspect it is apposite that we refer to the decision of the Supreme Court of India in the case of *Arun Shankar Shukla v. State of UP* 1999 Cr LJ 3964. The Supreme Court in addressing the inherent powers of the High Court which is statutorily envisaged under s 482 of the Indian Criminal Procedure Code observed that:

> It is true that under s. 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. *But the expression 'abuse of the process of law' or 'to secure the ends of justice' do not confer unlimited jurisdiction on the High Court and the alleged abused of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in s. 482 of the Code in cases where there is no express provisions empowering the High Court to achieve the said object. It is well neigh settled that inherent powers is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provisions of the Code*.

[27] Closer to home the above English common law doctrine of inherent jurisdiction found its way and adopted by the Malaysian Courts in the landmark case of the then Supreme Court case of *Karpal Singh & Anor v. Public Prosecutor* which as stated earlier prompted the appellant in this case to file the motion before the High Court. *The issue now is whether such doctrine of inherent jurisdiction and thus inherent power can be exercised to strike out the charges and to have the appellant acquitted and discharged on those charges*.

[28] In this regard it is appropriate to recall the reminder by the Supreme Court in *Karpal Singh v. Public Prosecutor* of the constitutional consequences of relying on the English concept of common law (one of which is the concept of inherent jurisdiction of the courts). *The Supreme Court cautioned that, unlike UK, the Malaysian Federal Constitution which is a written law, is specifically declared to be the supreme law of the land, and that the UK has no criminal procedure code as that enacted by our legislature. The court also considered the effect of s. 5 of the Criminal Code which provides for English law relating to criminal procedure to be applied when there does not exist any special provision on the matter either in the Code or any other existing circumstances*. In his speech delivering the judgment of the court, Abdul Hamid Omar LP said at pp. 548-549:

> *Perhaps it is appropriate that we now pause to consider the constitutional consequences of relying on the English common law concept. Unlike UK, the Constitution of the Federation which is a written law is specifically declared to be the supreme law of the land. Also, it is to be noted that UK has no criminal procedure code as enacted by our legislature*. For our immediate

purpose we wish to refer to art. 145(3) of the Constitution which states that the Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before Syariah Court *etc*. ... *The discretion vested in the Attorney General is unfettered and cannot be challenged and substituted by that of the court's. The reasoning and logic behind such contention is well illustrated in the case of Public Prosecutor v. Lee Tin Bau [1985] 1 MLJ 388, Long bin Samat & Ors v. Public Prosecutor [1974] 2 MLJ 152, Public Prosecutor v. Datuk Harun bin Haji Idris and Ors [1976] 2 MLJ 116 and Poh Cho Ching v. Public Prosecutor [1982] 1 MLJ 86. In the circumstances, it is superfluous to reiterate the same points*.

Another relevant consideration is our Criminal Procedure Code and its relationship with present English common law. The Criminal Procedure Code (Amendments and Extension) Act 1976, which came into force on 9 January 1976 is applicable to the whole of Malaysia, amending and codifying the previous separate legislations. The Code, as its name suggests was intended to be an exhaustive pronouncement of the criminal procedure. Section 5 of the Code is indicative of the principles to be applied by local courts. This section provides for English law relating to criminal procedure to be applied when there does not exist any special provision on the matter either in the Code or any other existing law. English law is applicable insofar as it does not 'conflict or be inconsistent with this Code and can be made auxiliary thereto.' The pronouncement and effect of the Code leave no *lacuna* under normal circumstances.

Section 173 of the Code stipulates the whole procedure in summary trials in the subordinate courts including magistrate courts. The opening para (a) provides that the court should ensure the proper framing of the charge, which must be explained to and understood by the accused before his plea is taken. The next para (b) relates to convictions upon a plea of guilty. The para (c) directs that when an accused claims trial, the court shall hear 'all such evidence' as may be produced in support of the prosecution.

In our considered view, the expression 'all such evidence' is not confined to evidence which is available to the prosecution but which could not be produced for unavoidable reason at a specific date of hearing forming part of the trial. The term 'all such evidence' is to be given a broad interpretation and should be produced at the continued hearing of the trial on the future occasion. Paragraph (d) guides the function of the court to issue summons. Paragraph (e) confirms the traditional right of the accused to cross-examine witnesses against him. The criterion for acquittal or conviction is stated in the next para (f).

The following para (g) is the crucial one for discussion in this case. The court may discharge the accused (not acquit) if the court considers the charge to be groundless. The magistrate will have to record the reasons for his decision. If he discharges the accused, there is nothing to prevent the prosecution re-charging the accused. The reason for the discharge may be that the magistrate finds he has no jurisdiction or the charge does not disclose any offence known to the Penal Code or other written law. *The only circumstances under which*

an accused can be acquitted are those stated in para (f) and when the prosecution offers no further evidence because it feels that the prosecution case has collapsed prematurely. There is no provision in the Code for striking out proceedings or acquittal without hearing all evidence the prosecution has the capacity to offer, even though postponements are needed. If any party feels that the charge and consequent proceedings are illegal on the face of record, which we feel is rare, his remedy is to take up appropriate proceedings before a High Court to quash the charge and the whole proceedings producing evidence to the satisfaction of the trial judge to adopt such a case. It is absurd and against common sense to believe that the legislature ever expected members of subordinate judiciary to exercise such vast powers, trespassing into the public prosecutor's area.

[29] The Supreme Court held that the English doctrine of inherent jurisdiction was hardly applicable in the subordinate courts but the High Court may invoke the doctrine of inherent power in circumstances such as found to be existing in *Public Prosecutor v. Lee Tin Bau* [1985] 1 MLJ 388. The court held that in matters like criminal law of a purely domestic nature, the court will only exercise its inherent power when there is miscarriage of justice. However the court said:

> *The court must be careful that the decision is not in conflict with the intention of the legislature as indicated in statutory powers. The inherent power apparently cannot be invoked to override an express provision of law or when there is another remedy available. Where the legislature has provided a particular mode of action or has vested an authority with powers to act in a particular manner and has prescribed the conditions limiting the scope of such action, the court cannot act outside those powers and conditions.*
>
> (emphasis added)

[21] There, the Federal Court made the point that the discretion vested in the Attorney General is unfettered and cannot be challenged and substituted by that of the court's and the inherent powers are not unlimited. Hence, members of subordinate judiciary, *ie*, Magistrates and Sessions Court Judges are not expected to exercise vast powers to strike out charges upon application by accused persons. This power is inherent to the High Court Judges, but to be exercised sparingly, only where there is miscarriage of justice: *Lee Tin Bau* (*supra*), *Long Samat* (*supra)* and *Datuk Harun Hj Idris* (*supra*).

[22] In *Long Samat* (*supra*), the Federal Court cited *PP v. Viran* [1947] CLJU 82; [1947] 1 LNS 82; [1947] MLJ 62 on the matter of prosecutorial discretion where the headnote of that case stated:

> Held:
>
> (1) that, by virtue of section 27 of the Interpretation and General Clauses Enactment (corresponding to section 4(g) of the Interpretation Ordinance of the Straits Settlements, where the law provides, either in the same or different Enactments, for different penalties for the same offence, both or

all of the provisions as to punishments are intended to stand side by side and it is left to the proper authorities to decide under which of the different provisions the offender shall be prosecuted and punished;

(2) that, in this case the order made by the district judge remitting the case to the Magistrate's Court for preliminary enquiry was wrong, as the district judge had jurisdiction to try the accused under the two charges preferred against him and should therefore have proceeded to hear the evidence or at least to hear the prosecution open the case;

(3) that the district judge can act under section 177 of the Criminal Procedure Code if upon the facts of the case it appears to him that the case ought to be tried by the High Court and in that case, he can either transfer by sending the case to a magistrate or himself proceed under Chapter XVII of the Criminal Procedure Code.

Spenser-Wilkinson J. at pages 64 and 65 said:

> This brings me to the question of the alleged discretion of the Public Prosecutor to decide under what provision of law an offender who has contravened the provisions of various different sections shall be prosecuted. It is contended on behalf of the Public Prosecutor that under section 376 of the Criminal Procedure Code he has a discretion to decide what the charge shall be in any particular case. *I do not think 'discretion' is quite the right word, for the real discretion is clearly given by the Code to the court. The position appears to me to be that, having the control and discretion of criminal prosecutions under the Code, the Public Prosecutor has a duty to conduct prosecutions in the best interests of justice. If, in his opinion, an offender is guilty of a technical or trivial offence and should therefore be prosecuted under some section which provides a light punishment, although such offender would be liable to a heavier punishment under some other provision, then it is his duty to act accordingly and to put the matter before the court in the way which in his opinion upon the material before him he considers to be right. He will be aware that the course he has advised may not, when all the evidence has been given, commend itself to the court which tried the case, but in the majority of cases the prosecuting officer will be in a position in the early stages of a prosecution to know the type of case with which he is dealing and is therefore the best judge as to the form in which the proceedings should be initiated*. If in the course of the proceedings it appears to the court upon the facts disclosed that the offender ought to be prosecuted under some other section, the court undoubtedly has a discretion to amend the charge or to remit the case to some higher court. This is judicial discretion and if properly exercised will not be interfered with. *On the other hand, I do not think it is incumbent upon a court to interfere with the procedure adopted by the prosecution unless and until on the evidence or other material before it the court is satisfied that some different course ought to be adopted*.
>
> (emphasis added)

[23] In my view, the applicant has "jumped the gun" by bringing this application before the court, as it is obviously premature. The court is bound by the Federal Court decision in *Ahmad Zubair Murshid* (*supra*) and has not heard any evidence from the prosecution in the trial, which is to commence in September 2025. The prosecution in this action had to explain why the applicant was charged on the evidence before it. Section 31 of the CJA was invoked by the applicant but this court opined that in the present case, the High Court may not exercise its revisionary powers in regard to the applicant since there was no more criminal proceeding and matter in the subordinate courts when his case there was transferred to the High Court on 28 February 2024 to be mentioned upon the consent being given by the State's Director of Prosecution.

[24] The applicant averred that the DPP's affidavit never stated the prosecution relied on s. 300(c) of the Penal Code, but this court viewed the allegation is a mere conjecture since the averment was made in para. 6.3 of encl. 5. On the issue that the IO's affidavit was also hearsay in regard to Dr Mohammad Shafie's report which he alleged was never stated as per para. 7.3 of encl. 4, I agreed with the DPP's submissions that the pathologist's evidence would come in the form of his testimony in court when the trial commences (refer to para. 6.5 of encl. 5). The prosecution bears the legal burden of proving its case beyond a reasonable doubt throughout the trial which is a very heavy burden indeed. The court's duty is to evaluate all the evidence presented by the prosecution on a maximum evaluation standard as required by s. 180(1) of the CPC.

[25] How can the court evaluate the evidence if the trial has not commenced? Whether the charge is correctly framed under s. 299 or s. 300 of the Penal Code, that exercise will be undertaken by the court at the close of the prosecution case. In the case of *Ravindran Ramasamy v. PP* [2015] 3 CLJ 421; [2015] 6 MLJ 509, the Federal Court held that the 'error' referred to in s. 156 of the CPC relates to the error in stating the offence or the particulars required to be stated in the charge. It does not include an error which relates to the ingredients of the offence. This is an important difference to take cognisance of as the courts have consistently held that an error or omission in stating the ingredients of an offence, renders to the fact that the accused would have been misled and thus a failure of justice.

[26] In the recent case of *PP v. Sanderasegaran Nithenanham* [2024] 4 CLJ 823, the Federal Court stated that:

> [25] On the other hand, the counsel for the respondent ventilated to us that the failure of the trial judge to state specifically under which limb of s. 300 had been proved by the prosecution had caused a miscarriage of justice for the respondent. This is pertinent for the defence to adduce the appropriate evidence to raise reasonable doubt on the prosecution case. ...

[38] Reverting to the present case, it is settled law that for the prosecution to establish an offence of murder punishable under s. 302 of the Penal Code, the elements to be proved by the prosecution are, the death of the deceased, the deceased died as a result of the injuries suffered, the injuries were caused by the accused, and the accused's act comes within one or a combination of the limbs under s. 300 of the Penal Code. The act under any one or combination of the limbs under s. 300 establishes the offence of murder.

[39] Next, the following facts must be proved by the prosecution to bring a case under s. 300(c), which are, the presence of bodily injury, the accused inflicted the injury voluntarily, not by accident or unintentionally and the injury is sufficient in the ordinary course of nature to cause death.

...

[49] This court had the occasion to deal with this matter in *Zulkiple Mohamad v. PP* [2022] 1 CLJ 673 where Abdul Rahman Sebli FCJ (as he then was), stated as follows:

[15] Whether the injury is sufficient in the ordinary course of nature to cause death is essentially a question of fact for the court to determine. Since however, this is a matter that is in the realm of medical science, medical evidence is needed to assist the court in arriving at a decision. Obviously, it is not for any layperson without the proper medical training and background to determine as a matter of scientific fact whether a particular injury is sufficient in the ordinary course of nature to cause death.

(emphasis added)

[27] Bearing in mind the direction of the Federal Court in the above case to the courts below as well as in *Ahmad Zubair Murshid* (*supra*), this court viewed that the application was inappropriate, although the court was mindful of its inherent power provided. Suffian LP in *Long Samat* (*supra*) discussed "prosecutorial discretion" and what was appropriate for the courts to do when faced with this situation. His Lordship stated:

The first of these provisions is subsection (i) of section 376 of the Criminal Procedure Code which provides:

> The Attorney-General shall be the Public Prosecutor and shall have the control and directions of all criminal prosecutions and proceedings under [the Criminal Procedure] Code.

and from this it would appear that the Public Prosecutor has a discretion as to what charges should be preferred, subject of course to the power of the court to amend charges in the course of a trial. That the law intends to give a wide discretion over criminal prosecutions to the Public Prosecutor appears from other provisions of the Criminal Procedure Code providing that for prosecution of certain offences his complaint is required (section 130) and yet for other offences his written sanction (section 129).

...

Such was the state of the authorities before independence. On independence the Federal Constitution came into force, and clause (3) of its Article 145 (as amended) provides:

> The Attorney-General shall have power exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Muslim court, a native court or a court-martial.

In our view, this clause from the supreme law clearly gives the Attorney-General very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence, he may also discontinue criminal proceedings that he has instituted, and the courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue. (For the position in England, please see Viscount Dilhorne's speech at pages 32-3 in *Smedleys Ltd v. Breed* [1974] 2 All ER 21). Still less then would the court have power to compel him to enhance a charge when he is content to go on with a charge of a less serious nature.

Anyone who is dissatisfied with the Attorney-General's decision not to prosecute, or not to go on with a prosecution or his decision to prefer a charge for a less serious offence when there is evidence of a more serious offence which should be tried in a higher court, should seek his remedy elsewhere, but not in the courts.

(emphasis added)

[28] This position has been followed by the Federal Court in *Ahmad Zubair Murshid* (*supra*), where the apex court cited with approval the High Court's decision refusing to acquit and discharge the appellant from all the charges or to strike out/stay the charges. The High Court held that:

(a) the inherent powers could not be invoked to override an express provision of the law. Article 145(3) of the Federal Constitution and s. 376 of the CPC which conferred sole prerogative powers to the attorney general and public prosecutor to institute, conduct or discontinue any criminal proceedings. Whether or not the prosecution would succeed depends on the evidence it would offer. It was premature to argue that the prosecution would unlikely to succeed due to lack of certain evidence;

(b) there is no evidence that the attorney general has acted *mala fide* against the appellant;

(c) the charges labeled against the appellant can be amended at any time before judgment is pronounced; and

(d) there is another avenue available, that is, it is for the appellant to make representation to the attorney general to reconsider withdrawing all the charges against him.

[29] The Court of Appeal in the same case in dealing with the inherent jurisdiction of the High Court to set aside and quash the charges held:

> There can be no doubt that the High Court has the inherent jurisdiction to set aside and quash a charge which is oppressive and an abuse of the process of the court (see *Connelly v. Direction of Public Prosecutions* [1964] 2 All ER 401, *Director of Public Prosecutions v. Humphrys* [1976] 2 All ER 497, *Karpal Singh & Anor v. Public Prosecutor* [1991] 2 MLJ 544 and *Dato' Seri Anwar bin Ibrahim v. Public Prosecutor* [2010] 6 MLJ 533). *The court will only exercise its inherent power when there is miscarriage of justice (see Karpal Singh & Anor v. Public Prosecutor and Public Prosecutor v. Ini Abong and other trials [2008] 8 MLJ 106). The jurisdiction to stay proceedings on the basis of abuse of process is to be exercised with greatest caution; the fact that a prosecution is ill advised or unwise is no basis for its exercise (see Archbold 2007: Criminal Pleading, Evidence and Practice, p 358). A court has no general power to quash the charge and to decline to allow the trial to proceed where an indictment has been preferred in accordance with the law (see Director of Public Prosecutions v. Humphrys).*
>
> (emphasis added)

[30] Applications to strike out charges are encountered by courts from time to time, despite the delay to the trials that may occur if the applications are dismissed and appeals filed against such decisions to dismiss them. This court again refers to the judgment of the Federal Court in *Ahmad Zubair Murshid*'s case (*supra*), where in para. 24, the apex court had sent a strong message to the subordinate courts and stated:

> [24] The next issue is on the inherent power of the court to strike out charge or charges preferred by the public prosecutor on the application by an accused person. *We have to come out strongly on this issue because it is our observation that lately there has been growing trend for accused to apply to the High Court by way of a notice of motion to strike out a charge or charges preferred against them by the public prosecutor at the subordinate court relying on Karpal Singh & Anor v. Public Prosecutor as the authority. This has resulted in considerable delay in criminal prosecution before the subordinate courts*. To illustrate this point further we will take the present case as an example. The appellant was charged before the sessions court on 17 July 2012. However because of the preliminary issues raised on the legality of the charges, as well as the appeal process, it took nearly two years for the full trial to proceed before the sessions court.
>
> (emphasis added)

[31] Counsel for the applicant also referred to other case laws which I have considered but I have no wish to comment on them, apart from the case of *PP v. Uthaya Kumar Ponnusamy* [2005] 3 CLJ 365. This was because they argued that the prosecution could not prove the applicant's intention but despite that still charged him for the offence of murder.

Nevertheless, the Court of Appeal held:

> This is the judgment of the court in relation to the appeal by the Public Prosecutor against an order made by Suriyadi J in the Shah Alam High Court when acting in his revisionary jurisdiction. The learned judge made an order discharging the respondent before us in respect of a charge brought before him under s. 506 of the Penal Code.
>
> We are in agreement with the submission of the learned deputy. *In essence, when the judgment of the learned judge is read as a whole, it would seem to require the prosecution to specify the mens rea of the charge. If that is the meaning of what the learned judge meant to convey, we must enter our vigorous dissent to this. It is settled law that the ingredients needed to be specified in a charge depends on the way dictated by statute. On a proper construction of s. 506 of the Penal Code, we are satisfied that no mens rea is required to be stated in the charge. We do not agree with the learned judge when ordering the discharge on this ground.*
>
> (emphasis added)

[32] Although the above case was relied on by the applicant in support of his application to strike out the murder charge, I found that *Uthaya Kumar*'s case (*supra*) did not support his contention for the reason aforesaid.

[33] Lastly, I refer to s. 173(g) of the CPC that was heavily relied on by the applicant. In *Chew Wai Keong v. PP* [2013] 10 CLJ 181; [2010] 6 MLJ 847, the High Court dismissed the application as s. 173(g) is limited in its application to the subordinate courts.

[34] The court noted that the power is only to discharge and not to acquit, unlike in the counsel for the applicant's submissions. What does the phrase "if for reasons to be recorded by the court" mean? In the case of *Chu Chee Peng v. PP* [1973] CLJU 18; [1973] 1 LNS 18; [1973] 2 MLJ 35, the Federal Court held that:

> In a summary trial a magistrate is authorised by the provisions of section 173(g) of the Criminal Procedure Code (F.M.S. Cap. 6) to rule that a charge is groundless (for reasons to be recorded) at any stage after plea and in the course of hearing prosecution witnesses but before the conclusion of the prosecution case.

[35] In the same appeal, Ong CJ stated the following:

> Thus, when the whole of section 173 is viewed in logical order, it will be seen that paragraph (g) has a good *raison d'etre* for its interposition between paragraph (f) and (h) *et seq*. *It is to be remembered that the procedure in section 173 is for summary trials. There are constantly cases coming up in subordinate courts where the very corner-stone in the prosecution case collapses at an early stage for a variety of reasons. In that event, should the Magistrate continue in the profitless labour of hearing the rest of the prosecution to the bitter end, whilst realising that at the close of the prosecution he would surely have to pronounce a verdict of acquittal? Without the express powers given him by paragraph (g) the futile exercise is inevitable. Therefore the paragraph provides that*:

> *(g) Nothing in paragraph (f) shall be deemed to prevent the court from discharging the accused at any previous stage of the case if for reasons to be recorded by the court it considers the charge to be groundless.*
>
> But Magistrates may occasionally be over-hasty; they may have misdirected themselves or fallen into error in other ways, when deciding to dismiss a case without wasting any more time on the prosecution. *Accordingly they are required to state their reasons for so doing and, lest their error lead to irremediable consequences, they are authorised only to "discharge" the accused; not, be it noted, to "acquit" him. …*
>
> It is true that under section 306 of the Criminal Procedure Code the Public Prosecutor may appeal against an order of acquittal made by any Magistrate. That provision, however, is one of general application, in no way derogating from the provisions of paragraph (g) in section 173. It is only an acquittal which requires to be set aside by the High Court before any retrial on the same charge can proceed. *Hence, in paragraphs (f) and (g), the distinction between acquittal and discharge is carefully drawn by reason of the different consequences which follow a discharge not amounting to acquittal. When an order is made under paragraph (g) no appeal is necessary to have the order set aside since it is not an acquittal. It may be added that paragraph (g) by implication does not, in our opinion, authorise a Magistrate to make an order of discharge amounting to acquittal in any case before the close of the prosecution. Where the sole or main prop in the prosecution case prematurely collapses, the prosecuting officer may in his discretion offer no further evidence. In that event, if it is clearly foreseeable that the witnesses remaining to be called would be unable to establish a prima facie case in the teeth of evidence previously recorded, the accused may, of course, be acquitted, but such an order would in effect fall to be made equally well under paragraph (f) of section 173, or sub-sections (ii) and (iii) of section 254 of the Criminal Procedure Code.*
>
> (emphasis added)

[36] From the above, it is clear that s. 173(g) invoked by the applicant does not allow for a discharge amounting to acquittal before the close of the prosecution case. The applicant attempted to obtain an acquittal from this court without having to go for a full trial, and only through affidavit evidence for the court's consideration. At the risk of repeating myself, I reiterate that the application is wrongly made as the law is settled on this issue and an accused would have to go through the whole trial where prosecutorial discretion has been exercised by the Public Prosecutor.

[37] In this regard, I refer to an appeal that was decided by Justice Collin Lawrence Sequerah (now JCA) in *PP v. Datuk Wira SM Faisal SM Nasimuddin Kamal* [2019] 8 CLJ 827, where His Lordship held:

> (1) … *Paragraph (g) of the CPC s. 173 of the CPC cannot be read in isolation; it must be read together with the rest of the section, in particular para. (f) which outlines the duty of the court at the conclusion of the prosecution's case*. A reading of the section, as a whole, envisages that when a charge is instituted, the process of a trial, if an accused pleads not guilty, is for evidence to be led

A in order to enable the court to evaluate the evidence in coming to a conclusion as to whether there is sufficient evidence to call for defence or to evaluate whether the prosecution has proved its case beyond reasonable doubt at the conclusion of the trial as the case may be. *Therefore, the act of discharging an accused person charged by reason that the charge is groundless, could only be made after evidence is led and this necessitates that the* B *trial commences first. The act of the Magistrate, in entertaining the application to strike out the charge pursuant to the NOA without hearing evidence from the prosecution, was misconceived in law.* (paras 20, 21,24, 26 & 27).

(emphasis added)

[38] The learned High Court Judge, in allowing the appeal by the C prosecution against the order of the Magistrate to discharge and acquit the respondent, stated:

[28] The Magistrate had also considered the contents of a police report Sri Hartamas No: 001420/2015 dated 23 November 2015 lodged by the respondent which *inter alia* stated that during a quarrel between the D complainant and the respondent on 22 November 2015, the complainant behaved in an aggressive manner whereupon the respondent acted in self-defence and suffered certain injuries as a result of which he was hospitalised.

...

E [40] In the present case, there were specific provisions relating to the procedure and conduct of summary trials laid down in s. 173 of the CPC. The inherent jurisdiction of the court cannot therefore be resorted to.

...

F [42] The issue of whether or not the respondent had lawfully exercised his right of private defence was a matter to be determined upon the proper evaluation of the evidence after the hearing and evaluation of evidence given by witnesses and not a matter to be summarily determined upon a consideration of averments contained in affidavits.

[39] As the law is settled on this issue, I see no reason to depart from G established judicial precedents and which this court is bound.

Conclusion

[40] Premised upon the above considerations, the court found the application was without merit, and therefore dismissed it.

H

I